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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,457	03/24/2000	Fred Christian Baij	29462	2374
23482	7590	02/14/2006	EXAMINER	
WILHELM LAW SERVICE, S.C. 100 W LAWRENCE ST THIRD FLOOR APPLETON, WI 54911			NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/535,457

Applicant(s)

BAIJ, FRED CHRISTIAN

Examiner

Chi Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11,23-30 and 65-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11,23-30 and 65-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is in response to the applicant's amendment filed on 7/6/2005.

#### ***Oath/Declaration***

The Declaration of Fred Christian Baij filed on 6/27/2005 is acknowledged.

#### ***Claim Objections***

Claim 8 is objected to because of the following informalities: the examiner believes claim 8 is depending on claim 2 not 24. Appropriate correction is required (second request).

Claim 76 is objected to because the newly citation "the magnitude of the second distance is greater than the magnitude of the first distance" does not have antecedent basis. Correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 27, 69, and 78-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currie (US 3,169,320).

In regarding claims 1-4, 6, 10-11, Currie discloses a plurality of elongate pieces of lumber operative to assist in layout and assembly of a wall, wherein such wall comprises a bottom plate, a top plate (not shown) (col. 2, lines 19-25) and a plurality of lumber studs 12 extending in between the plates. A lumber product used in standard in

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the industry for framing. Each of the elongated lumber having a first end and a second end, and a length therebetween, a front surface, a back surface, opposing sides extending between the front and back surfaces along the length thereof, and a thickness between the front and back surfaces. A plurality of marking lines 26 on the front surface of the plates having a leading edge and a trailing edge and defining a position for placement on the respective surface (see fig. 2), sets of two side-by-side stud locator markings arrayed along the lengths of respective units of said framing lumber product. The distance between the marks corresponding to the thickness of the stud (see figure 2) and the interval of the marks on the lumber piece is increment of 16" (fig. 3), 24", 32", 48", etc. (see figure 1).

Currie teaches the structural elements for the marking on lumber piece as stated above. However, Currie does not teach specifically at least one strap securing the plurality of elongate pieces of lumber together as said bundle. Examiner takes Official Notice the fact that lumber used in dwelling construction typically comes in bundles wrapped with straps. To provide Jackson lumber pieces in strapped bundles would be obvious for delivery to the job site as this is a conventional technique.

With regard to claims 5, 27, 69, and 78-79, as set forth above, Currie teaches the structural element for the stud-locating markers, which including the interval of 16" increments are the industry standard for spacing framing studs and a plurality of stud locator markings spaced along the lengths interval of 8", 24", 32" and 48", leading edge-to-edge. However, Currie does not teach specifically the variation in spacing between the stud locator markings on a respective the framing lumber product, and from unit of

product to unit of product, being consistently no more than 0.13" leading edge to leading edge or the leading and trailing edges of said marking are spaced from each other by a distance, greater than such pre-determined thickness, of up to about 0.13". Applicant fails to show criticality for specifically claimed distance, therefore it would have been an obvious design choice to use the distance such as specified in these claims.

In regarding claims 7-9, Currie teaches the structural elements for the lumber product as set forth above. And Currie further teaches the elongated piece of lumber obviously being substantially devoid of any marking indicators away from the stud locator markings when the studs are placed on the plates.

Claims 30, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currie in view of Jackson (US 4,212,108).

In regard claim 30, and 75, Currie teaches the claimed structural elements as stated. However, Currie does not teach specifically the leading, and trailing lines having cross lines extending between these lines. Jackson teaches marking lines on framing lumber as shown in figure 2, having cross lines extending between leading and trailing lines. At the time of the invention, it would have been obvious to one having an ordinary skill in the art to combine Currie with Jackson for cross lines extending between the leading and trailing lines. The motivation for doing so would have been to enhance more visibility of the markings thus carpenters could be quickly located the markings.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-26, 28, 29, 65-68, 70-74, and 76 are rejected under 35 U.S.C. 102(b) as being anticipated by Currie.

In regard claims 23-26, 28, 29, 65-68, 70-74, Currie discloses a plurality of elongate pieces of lumber operative to assist in layout and assembly of a wall, wherein such wall comprises a bottom plate, a top plate (not shown) (col. 2, lines 19-25) and a plurality of lumber studs 12 extending in between the plates. A lumber product used in standard in the industry for framing. Each of the elongated lumber having a first end and a second end, and a length therebetween, a front surface, a back surface, opposing sides extending between the front and back surfaces along the length thereof, and a thickness between the front and back surfaces. A plurality of marking lines 26 on the front surface of the plates having a leading edge and a trailing edge and defining a position for placement on the respective surface (see fig. 2), sets of two side-by-side stud locator markings arrayed along the lengths of respective units of said framing lumber product. The distance between the marks corresponding to the thickness of the stud (see figure 2) and the interval of the marks on the lumber piece is increment of 16" (fig. 3), 24", 32", 48", etc. (see figure 1). And since the leading and trailing lines are substantially corresponding to the standard thickness of the studs, therefore the studs are substantially devoid the markings lines upon the studs are positioned on.

In regard claim 76, Currie teaches the structural elements for the lumber markings as stated. Currie further teaches the trailing edge of a first said stud locator

marking is separated from the leading edge of a second different said stud locator marking by a first distance whereby when a first stud is property mounted to said framing lumber product at said first stud locator marking and a second stud is property mounted to said framing lumber product at said second stud locator marking, said first and second studs define a second distance therebetween (see fig. 2), and the magnitude of the second distance is greater than the magnitude of the first distance so that at least a portion of each of said first and second stud locator markings remains visible while said first and second studs are mounted thereupon.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-11, 23-30, and 65-79 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Battaglia, Munno, Buhler, and Sparkes teach marking indicators on framing studs.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

CQN

2/3/2006



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